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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
JAMES W. & KATHERINE M. BERRY  
and KING CONSTRUCTION COMPANY,

Appellants,

vs.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB Nos. 556 and 556-A

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THESE MATTERS being the appeals of a \$250.00 civil penalty for an  
alleged outdoor burning violation of respondent's Regulation I; having  
come on regularly for hearing before the Pollution Control Hearings  
Board on May 29, 1974, at Seattle, Washington; and appellants  
James W. and Katherine M. Berry appearing pro se, and appellant King  
Construction Company appearing through its owner Dennis D. King, and  
respondent Puget Sound Air Pollution Control Agency appearing through  
its attorney Keith D. McGoffin; and Board members present at the hearing  
being Walt Woodward and Mary Ellen McCaffree; and the Board having

1 considered the sworn testimony, exhibits, records and files herein and  
2 having entered on the 4th day of June, 1974, its proposed Findings of  
3 Fact, Conclusions of Law and Order; and the Board having served said  
4 proposed Findings, Conclusions and Order upon all parties herein by  
5 certified mail, return receipt requested and twenty days having elapsed  
6 from said service; and

7 The Board having received no exceptions to said proposed Findings,  
8 Conclusions and Order; and the Board being fully advised in the  
9 premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
11 Findings of Fact, Conclusions of Law and Order, dated the 4th day of  
12 June, 1974, and incorporated by this reference herein and attached hereto  
13 as Exhibit A, are adopted and hereby entered as the Board's Final  
14 Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington this 2nd day of July, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

17 Walt Woodward  
18 WALT WOODWARD, Chairman  
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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
JAMES W. & KATHERINE  
M. BERRY and KING CONSTRUCTION  
COMPANY,

Appellants,

vs.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB Nos. 556 and 556-A

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

These consolidated matters, the appeals of a \$250.00 civil penalty for an alleged outdoor burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) in the Seattle facility of the Board of Industrial Insurance Appeals at 11:00 a.m. on May 29, 1974.

Appellants James W. and Katherine M. Berry appeared pro se. Appellant King Construction Company was represented by its owner, Dennis D. King. Respondent appeared through Keith D. McGoffin. David Ummel, Olympia court reporter, recorded the proceedings.

EXHIBIT A

1 An informal conference, requested by appellants Berry, was  
2 waived.

3 Witnesses were sworn and testified. Exhibits were admitted.

4 From testimony heard and exhibits examined, the Pollution Control  
5 Hearings Board makes these

6 FINDINGS OF FACT

7 I:

8 On March 1, 1974, on land owned in Maltby Industrial Park,  
9 Snohomish County, by James W. and Katherine M. Berry, an outdoor  
10 fire, consisting of vegetation and several automobile rubber tires,  
11 was ignited and burned under the direction and control of King  
12 Construction Company.

13 II.

14 The fire, observed by two members of respondent's staff,  
15 resulted in appellants being served by respondent with Notice of  
16 Violation No. 9322, citing Section 9.02 of respondent's Regulation  
17 I, and Notice of Civil Penalty No. 1467 in the amount of \$250.00,  
18 which is the subject of these appeals.

19 III.

20 Section 9.02 of respondent's Regulation I makes it unlawful to  
21 cause or allow any outdoor fire containing rubber products. The  
22 same section also states that it is prima facie evidence that the  
23 person who owns property on which an outdoor fire occurs has caused  
24 or allowed said fire. Section 3.29 authorizes respondent to levy  
25 a civil penalty of not more than \$250.00 for any violation of  
26 Regulation I.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

IV.

When appellants Berry purchased the property in 1973, the contract called for removal, by the seller, of debris and brush by February 15, 1974. Appellant King Construction Company was engaged by the seller to perform that removal and was so engaged on March 1, 1974 when the fire was observed. Appellants Berry gave no authority to appellant King Construction Company to ignite the fire and to include rubber tires as fuel.

V.

Appellant King Construction Company, working in an incessant rain and with its mobile clearing equipment in imminent danger of mechanical failure, added the tires to facilitate the fire and, thus, speed the clearing project.

VI.

Any Conclusion of Law hereinafter stated which shall be deemed to be a Finding of Fact herewith is adopted as same.

From these findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

There was a violation of respondent's Regulation I on March 1, 1974 as cited in Notice of Violation No. 9322.

II.

There was good cause, at the time of its issuance, for Notice of Violation No. 9322 to have been served on appellants Berry as owners of the property. Testimony, however, made it abundantly

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 clear that appellants had no other connection with or responsibility  
2 for the offending fire.

3 III.

4 Appellant King Construction Company assumed total responsibility  
5 for the fire and its resultant violation of Section 9.02 of  
6 respondent's Regulation I.

7 IV.

8 The maximum allowable penalty levied in Notice of Civil Penalty  
9 No. 1467 could be said to be reasonable because of the deliberate  
10 addition of rubber tires to the fire. Appellant King Construction  
11 Company, however, is entitled to some clemency. The Board makes it  
12 clear that its feeling for clemency in no way is based on the heavy  
13 rain and the expedient addition of rubber tires to make a hotter  
14 fire; that is no excuse and the Board, by its clemency, does not  
15 recognize such a flagrant act as excusable. The Board, however, is  
16 favorably impressed by two things: (1) no testimony concerning  
17 any prior violations by King Construction Company and (2) the  
18 frank and complete assumption of responsibility by the owner of  
19 King Construction Company.

20 V.

21 Any Finding of Fact herein which is deemed to be a Conclusion  
22 of Law herewith is adopted as same.

23 From these Conclusions, the Pollution Control Hearings Board  
24 issues this

25 ORDER

26 The appeal is sustained as to appellants Berry and Notice of  
27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 Violation No. 9322 and Notice of Civil Penalty No. 1467 are  
2 stricken as to them. The appeal of King Construction Company is  
3 denied and King Construction Company is directed immediately to  
4 pay respondent \$150.00, the balance of \$100.00 to be suspended  
5 pending no similar violation in a period of six months from the  
6 date this order becomes final.

7 DONE at Lacey, Washington, this 4th day of June, 1974.

8 POLLUTION CONTROL HEARINGS BOARD

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10 Walt Woodward  
11 WALT WOODWARD, Chairman

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13 Mary Ellen McCaffree  
14 MARY ELLEN McCAFFREE, Member

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26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER